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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of the

Complaint of Plaintiffs, McALLISTER
TOWING & TRANSPORTATION CO.,
INC. as Owner and McALLISTER
TOWING OF NEW YORK, LLC, as Owner
Pro Hac Vice of the Tug PATRICE
McALLISTER for Exoneration from/or
Limitation of Liability

1:12-CV-02505-LAK

IN ADMIRALTY

OHIO MACHINERY COMPANY
d/b/a OHIO CAT's ANSWER TO
MCALLISTER'S AMENDED
COUNTERCLAIM

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Ohio Machinery Company d/b/a Ohio CAT (“Ohio CAT”) contends that it is not subject to personal jurisdiction in the State of New York, and the filing of this answer is not a waiver of Ohio Cat’s defense of lack of personal jurisdiction.

Ohio Machinery Company d/b/a Ohio CAT (“Ohio CAT”/ “Claimant”), by and through its attorneys, LYONS & FLOOD, in Answer to the Counterclaim of McAllister Towing & Transportation Co. Inc., as owner and McAllister Towing of New York, LLC, as owner *pro hac vice* of the tug PATRICE McALLISTER (hereinafter “McAllister”), states upon information and belief, as follows:

SEVENTH: The allegations contained in the Seventh Paragraph (7) are statements of law to which no answer is required.

EIGHTH: The allegations contained in the Eighth Paragraph (8) are statements of law to which no answer is required.

NINTH: Ohio CAT admits the allegations contained in the Ninth Paragraph (9).

TENTH: Ohio CAT denies the allegations contained in the Tenth Paragraph (10).

ELEVENTH: The allegations contained in the Eleventh Paragraph (11) are denied for lack of knowledge or information sufficient to form a belief therein.

TWELFTH: The allegations contained in the Twelfth Paragraph (12) are denied for lack of knowledge or information sufficient to form a belief therein.

THIRTEENTH: The allegations contained in the Thirteenth Paragraph (13) are denied for lack of knowledge or information sufficient to form a belief therein.

FOURTEENTH: Ohio CAT admits the allegations contained in the Fourteenth Paragraph (14).

FIFTEENTH: Ohio CAT denies the allegations contained in the Fifteenth Paragraph (15).

SIXTEENTH: Ohio CAT denies the allegations contained in the Sixteenth Paragraph (16).

SEVENTEENTH: Ohio CAT admits that it sells or performs repairs on behalf of Caterpillar, Inc., but denies the remaining allegations contained in the Seventeenth Paragraph.

EIGHTEENTH: The allegations contained in the Eighteenth Paragraph (18) are denied for lack of knowledge or information sufficient to form a belief therein.

NINETEENTH: Ohio CAT admits that it contracted with McAllister to perform certain work on the tug's engines, but denies the remaining allegations contained in the Nineteenth Paragraph (19).

TWENTIETH: Ohio CAT admits that it performed certain repairs and overhaul on the tug's engines, but denies the remaining allegations contained in the Twentieth Paragraph (20).

TWENTY-FIRST: Ohio CAT denies the allegations contained in the Twenty-First Paragraph (21).

TWENTY-SECOND: Ohio CAT denies the allegations contained in the Twenty-Second Paragraph (22).

TWENTY-THIRD: Ohio CAT admits the allegations contained in the Twenty-Third Paragraph (23).

TWENTY-FOURTH: Ohio CAT admits the allegations contained in the Twenty-Fourth Paragraph (24).

TWENTY-FIFTH: Ohio CAT denies the allegations contained in the Twenty-Fifth Paragraph (25).

TWENTY-SIXTH: Ohio CAT denies the allegations contained in the Twenty-Sixth Paragraph (26).

TWENTY-SEVENTH: Ohio CAT denies the allegations contained in the Twenty-Seventh Paragraph (27).

TWENTY-EIGHTH: The allegations contained in the Twenty-Eighth Paragraph (28) are denied for lack of knowledge or information sufficient to form a belief therein.

TWENTY-NINTH: The allegations contained in the Twenty-Ninth Paragraph (29) are denied for lack of knowledge or information sufficient to form a belief therein.

THIRTIETH: Ohio CAT denies the allegations contained in the Thirtieth Paragraph (30).

THIRTY-FIRST: Ohio CAT denies the allegations contained in the Thirty-First Paragraph (31).

THIRTY-SECOND: Ohio CAT denies the allegations contained in the Thirty-Second Paragraph (31).

THIRTY-THIRD: Ohio CAT denies the allegations contained in the Thirty-Third Paragraph (33).

THIRTY-FOURTH: Ohio CAT denies the allegations contained in the Thirty-Fourth Paragraph (34).

THIRTY-FIFTH: Ohio CAT denies the allegations contained in the Thirty-Fifth Paragraph (35).

THIRTY-SIXTH: Ohio CAT denies the allegations contained in the Thirty-Sixth Paragraph (36).

THIRTY-SEVENTH: Ohio CAT denies the allegations contained in the Thirty-Seventh Paragraph (37).

THIRTY-EIGHTH: Ohio CAT denies the allegations contained in the Thirty-Eighth Paragraph (38).

**AS AND FOR A FIRST SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE**

Ohio CAT contends that it is not subject to personal jurisdiction in the State of New York, and the filing of this answer is not a waiver of the defense of lack of personal jurisdiction.

Ohio CAT further contends that it is not necessary for it to submit an answer at this time because Ohio CAT has not been served with any litigation concerning this matter; however, Ohio CAT is filing in the event that this Honorable Court determines that Ohio CAT was required to comply with the Court's order of April 4, 2012.

**AS AND FOR A SECOND SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE**

The Amended Counterclaim fails to state a claim or cause of action upon which relief can be granted.

**AS AND FOR A THIRD SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE**

Petitioners, as owners and operators of the tug PATRICE McALLISTER, failed to exercise due diligence to make and maintain the tug PATRICE McALLISTER in all respects seaworthy. The tug PATRICE McALLISTER was not tight, staunch, strong and properly or competently manned, equipped and supplied, seaworthy, fit or proper for the service in which she was engaged.

**AS AND FOR A FOURTH SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE**

Petitioners, as owners and operators of the tug PATRICE McALLISTER, are not entitled to recover for any and all damages and/or injuries caused by this alleged casualty, or done, occasioned or incurred on the aforesaid voyage on which the said alleged casualty occurred because of the negligence of its personnel, and/or the unseaworthy condition of the tug PATRICE McALLISTER.

**AS AND FOR A FIFTH SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE**

The alleged incident, loss, damages and/or injuries were the result of the negligence, fault, or want of due care on the part of Petitioners, in their capacity as owners and/or operators

of the tug PATRICE McALLISTER, and as a result of violations of applicable Federal, Safety and Operating Regulations and/or Statutes by Petitioners.

**AS AND FOR A SIXTH SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE**

The alleged incident onboard the tug PATRICE McALLISTER, including any loss, damages and/or injuries to persons onboard the tug, were not the result of any negligence, fault, or want of due care on the part of Ohio CAT or those for whom Ohio CAT may be responsible.

**AS AND FOR A SEVENTH SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSES**

In filing this Answer to the Amended Counterclaim, Ohio CAT specifically reserves all rights to pursue all available claims and defenses in the courts of Ohio for resolutions of any and all issues. The filing of this Answer is in no way a waiver of this right and defense and Ohio CAT is not agreeing to join all issues in this proceeding by filing this Answer.

**AS AND FOR AN EIGHTH SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE**

Ohio CAT states that any claims against it by the Petitioners are barred by Ohio law.

**AS AND FOR A NINTH SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE**

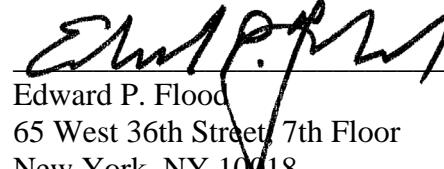
The Amended Counterclaim is barred by the language of agreement(s) between the parties and/or the terms of documents and/or materials exchanged between the parties.

WHEREFORE Ohio CAT prays that the Amended Counterclaim be dismissed together with costs and attorneys' fees.

DATED: New York, New York
January 30, 2013

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CERTIFICATE OF SERVICE

Jon Werner, an attorney duly admitted to practice before this Honorable Court, affirms on this 30th day of January 2013, that he served true copies of Ohio Machinery Company d/b/a Ohio CAT's Answer to McAllister's Amended Counterclaim via CM/ECF filing and via e-mail upon:

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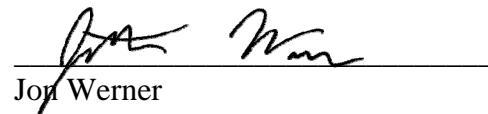
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Executed on: January 30, 2013
New York, New York



Jon Werner

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